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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 451

In the Matter of:

J. K. ABERNATHY, SS No. 244-42-7854,
Employee, et al, *Appellants*

and

EASTERN AIR LINES, INCORPORATED, Employer,

and

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA
Raleigh, North Carolina, *Appellee*

APPELLANTS HEREIN:

One Hundred and Twenty-Three Individual Members
of the Charlotte Council, Air Line Pilots Association,
Eastern Air Lines, Inc.

On Appeal from the Supreme Court of North Carolina

STATEMENT AS TO JURISDICTION

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In the Matter of:

J. K. ABERNATHY, SS No. 244-42-7854,
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EASTERN AIR LINES, INCORPORATED, Employer,

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APPELLANTS HEREIN:

One Hundred and Twenty-Three Individual Members
of the Charlotte Council, Air Line Pilots Association,
Eastern Air Lines, Inc.

On Appeal from the Supreme Court of North Carolina

STATEMENT AS TO JURISDICTION

Appellants herein, the One Hundred and Twenty Three Members of the Charlotte Council, Air Line Pilots Association, Eastern Air Lines, Inc., as of June 23, 1962, appeal from the judgment of the Supreme

Court of North Carolina entered on April 10, 1963, reversing a judgment of the Superior Court of Mecklenburg County, North Carolina. It has been stipulated by the attorneys of record for these appellants and the Chief Counsel of the Employment Security Commission of the State of North Carolina, that the above designation of this particular group of appellants does not refer to any appeal by an organization or association *per se*, but rather refers to the appeals taken in an individual capacity by the One Hundred and Twenty Three Members of the Charlotte Council, Air Line Pilots Association, Eastern Air Lines, Inc., as of June 23, 1962 (R 125-126).[1]

OPINIONS BELOW

The Decisions by R. B. Overton, Special Appeals Deputy of the Employment Security Commission of North Carolina (App., pp. 1a-9a, 10a-28a), and the full Employment Security Commission of North Carolina are not officially reported. The judgment of the Superior Court of Mecklenburg County, North Carolina (App., pp. 29a-31a) is not officially reported. The opinion and judgment of the Supreme Court of North Carolina (App. pp. 33a-47a) is reported in 130 S.E. (2d) 292; 259 N.C. 190.

JURISDICTION

The judgment of the Superior Court of Mecklenburg County, North Carolina was entered on October 25, 1962 (R 89; App., p. 31a). The opinion and judgment of the Supreme Court of North Carolina, which also constitutes its final judgment, was filed and entered April 10, 1963 (R 127; App., p. 32a).

[1]Herein, "R" refers to the Record certified to this Court by the Clerk of the Supreme Court of North Carolina.

Appellants herein filed Notice of Appeal to this Court on July 8, 1963. Notice of Appeal was filed with the Clerk of the Supreme Court of North Carolina. This Court has jurisdiction of this appeal under 28 U.S.C. sec. 1257(2). *King Manufacturing Company vs. City Council of Augusta*, 277 U.S. 100; *Hamilton vs. Regents of University of California*, 293 U.S. 245, 257-258; *Lathrop vs. Donohue*, 367 U.S. 820, 824; *Sherbert vs. Verner*, 83 S. Ct. 1790.

STATUTE INVOLVED

The validity of the following General Statute of the State of North Carolina is involved in this appeal:

The North Carolina Employment Security Law provides (The General Statutes of North Carolina, Vol. 2C, 1958 Replacement Volume, Chapter 96, Sec. 14, Page 307; The General Statutes of North Carolina, 1961 Cumulative Supplement to Replacement Volume 2C, Chapter 96, Sec. 14, Subsection (4) Pages 88-89):

Sec. 96-14(4). Disqualifications for Benefits. — An Individual shall be disqualified for benefits:

(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in *active* progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last

employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(1961, c. 454, S. 20)

Prior to the Amendment of North Carolina General Statute 96-14(4) by the 1961 General Assembly of the State of North Carolina, North Carolina General Statute 96-14(4) provided (The General Statutes of North Carolina, Vol. 2C, 1958 Replacement Volume, Chapter 96, Sec. 14, Subsection (4), Page 308):

"An individual shall be disqualified for benefits . . . (4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that —

(a) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: Provided, for the purpose of this subdivision (4), that if in any case separate branches of work which are commonly conducted as separate business in separate premises are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment, or other premises."

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Did the enactment of North Carolina General Statute 96-14(4), as promulgated by Amendment of said General Statute by the 1961 General Assembly of the State of North Carolina, constitute an abridgment of the privileges of the appellants herein, citizens of the United States of America, and does said General Statute of the State of North Carolina deprive these appellants of property without due process of law and deny to these appellants, citizens of the State of North Carolina, the equal protection of the laws, as guaranteed to them by Amendment XIV of the Constitution of the United States?

2. Were the disqualifying provisions of North Carolina General Statute 96-14(4) an unnecessary inter-

ference with the rights of the citizens of the State of North Carolina and did the enactment of such General Statute amount to an usurpation of the police power of the State of North Carolina, in that the said Statute was more extensive and discriminatory than was required for the protection of the public health, safety, morals and general welfare?

3. Is North Carolina General Statute 96-14(4), as amended by the 1961 North Carolina General Assembly, null and void and unconstitutional as being contrary both to the declared public policies of the State of North Carolina's Employment Security Act and the Federal Social Security Act.

4. Did the exactment of compulsory contributions from the employer of these appellants-claimants, Eastern Air Lines, Inc. (carrier of interstate commerce) constitute an undue burden on their employer and upon interstate commerce, by virtue of the fact that these employees-claimants were disqualified from receiving benefits from the mutual fund to which their employer had been required to contribute during a period of time when their unemployment resulted through no fault of their own and evolved from a labor dispute over which they had no control and in which they had no interest and did not participate?

5. Did the enactment of North Carolina General Statute 96-14(4), as amended by the 1961 North

Carolina General Assembly, result in a disharmony to the declared uniform objectives sought by the Congress through its enactment of the Federal Social Security Act?

6. Under the authority of the Federal Social Security Act and with the assistance of certain federal funds payable to a State, may a State discriminate in its awarding of benefits to some of its citizens idled by a labor dispute over which they had no control and by denying benefits to others of its citizens unemployed through no fault of their own by the same labor dispute?

7. Did the Congress by its enactment of the Federal Social Security Act intend for unemployment compensation insurance to be paid by the states on a uniform national basis and without discrimination by any one of the several states which would deny to certain citizens of that state rights enjoyed under the Federal Social Security Act by citizens of other states?

STATEMENT OF THE CASE

This action was instituted by the appellants through their having given Notice of Appeal to the Superior Court of Mecklenburg County, North Carolina (R 7, 65) pursuant to the provisions of North Carolina General Statute 96-15(i) to review and reverse the decision of the Employment Security Commission of the State of North Carolina (R 48-65), holding that these appellants were disqualified from

receiving unemployment insurance benefits beginning June 24, 1962, through July 12, 1962, and continuing as long as a labor dispute between Eastern Air Lines, Inc. and the flight engineers remained in active progress and their unemployment was allegedly caused thereby. The Superior Court of Mecklenburg County, North Carolina reversed and set aside the decision of the Full Commission of the Employment Security Commission of the State of North Carolina (R 87-89; App., pp. 29a-31a). The Supreme Court of the State of North Carolina reversed the judgment of the Superior Court of Mecklenburg County (R 97-105 at Page 105; App., pp. 33a-47a).

The Facts of the Record:

Eastern Air Lines, Inc., the employer herein, flies airplanes transporting passengers and cargo throughout the eastern half of the United States (R 29-30). Among the 120 cities on Eastern's routes are several in North Carolina: Raleigh, Durham, Greensboro, High Point, Winston-Salem and Charlotte (R 29-30).

At 1:00 P. M. Eastern Standard Time on June 23, 1962, Eastern Air Lines' 575 flight engineers refused to fly the four-engine piston and jet planes (the ones they previously had flown) (R 31). But, there was no picketing in North Carolina (R 16). There were no flight engineers here in North Carolina (R 15).

None of the Eastern Air Lines employees in North Carolina required the services of the flight engineers as a prerequisite to the performance of their own duties. Included among the Eastern Air Lines Employees in North Carolina are these particular appellants (R 16, 17, 18, 19, 20, 21, 23, 24, 25, 26).

As a consequence of the controversy between Eastern Air Lines and the Flight Engineers International Association concerning the establishment of qualifications for the third member of the cockpit crew aboard pure jet and four-engine aircraft only, operated by Eastern, the flight engineers on June 23, 1962, refused to take their assignments, requiring that certain Eastern flights which required the services of a flight engineer to be cancelled (R 13). Eastern thereafter elected to cease all of its operations because of the inconvenience to the public and because of anticipated economic losses (R 13, 23). The unemployment of these appellants was not due to the dispute or controversy in existence between the flight engineers and Eastern Air Lines, Inc., but to the aforementioned policy announced by the company (R 24, 25, 26). The two-engine aircraft which these appellants operated and flew as pilots were not cancelled in consequence of the strike of the flight engineers, but flights of such aircraft were terminated because of company policy, economic conditions, and public convenience (R 13, 15, 23, 24, 25, 26). And, but for the announced company policy, these appellants-pilots would have continued to fly their two-engine aircraft, throughout the duration of the dispute between the Flight Engineers International Association and Eastern Air Lines (R 24, 25).

Eastern could have continued operation of its two-engine planes in North Carolina, inasmuch as these planes did not require a flight engineer, were piloted only by these appellants, and could have continued to have been flown by these appellants but, for the above reasons, Eastern Air Lines elected not to do so (R 20, 23, 24, 25). Eastern has numerous two-engine flights

entering North Carolina from points North and South (R 20). None of Eastern Air Lines' 575 flight engineers is based in North Carolina, South Carolina or Virginia (R 15, 16, 51). They are based in Boston, New York, Washington, Miami, Atlanta, Chicago and New Orleans (R 21). The only contact the flight engineers have with North Carolina is that they are momentarily on the ground when four-engine and jet planes land to unload and load passengers. They then depart, returning to their bases and homes outside North Carolina (R 21). There were no labor disputes in "active progress" between Eastern and any of its employees in any of the areas served by the company in North Carolina and no picketing was carried on anywhere in this State (R 16, 100). None of Eastern's employees in North Carolina were either directly or indirectly interested in the outcome of the controversy between the flight engineers and Eastern. They did not stand to gain or lose anything in the outcome of this controversy other than being able to return to their jobs. They did not lend their support to the controversy and Eastern had no dispute with any of them regarding wages, hours or terms and conditions of their employment (R 22, 26). None of these employees-appellants had refused to work (R 22).

Although the President of the United States appointed a Presidential Emergency Board which recommended arbitration of the issue leading to this dispute between the flight engineers and Eastern Air Lines, the flight engineers union refused to arbitrate the controversy (R. 31-32).

The two-engine piston planes flown by these appellants have no flight engineers and never have had such engineers aboard; they are operated exclusively

by these pilots-appellants (R 19). On four-engine piston planes and on the jet aircraft, the flight crew must include, in addition to the pilots, an individual with a flight engineer's license. However, there is no federal government requirement that this third individual be an employee represented by the Flight Engineers International Association or that he possess only the skills required to hold a flight engineer's license. He may, for example, be a qualified pilot, who also possesses a flight engineer's license (R 15, 20, 23).

The only contact the Eastern Air Lines flight engineers had with the State of North Carolina was that they were momentarily on the ground when their four-engine piston and jet planes landed at the airports in North Carolina, while passengers deplaned and boarded those particular flights (R 21). In North Carolina, jets land only at Charlotte (R 14). The flight engineers then fly on, returning to their bases and homes, all outside North Carolina (R 21).

The North Carolina employees of Eastern Air Lines, including these appellants, became unemployed because the flight engineers union, headquartered in Miami, Florida, refused to work (R 21), and without them, economy of operation and the convenience of the public required Eastern to cease operations and furlough its employees, even these appellants who flew only two-engine aircraft, upon which no flight engineers were assigned (R 13, 15).

On or about June 28, 1962, there were received from the local offices of the Employment Security Commission of North Carolina lists of employees who were furloughed as a result of the labor dispute existing between the Flight Engineers International As-

sociation and Eastern Air Lines (R 2). On the same date, an Order was issued by the Chairman of the Employment Security Commission removing these claims from the Claims Deputy to a Special Appeals Deputy, for the purpose of conducting a hearing and making a decision in this matter (R 3). Such hearing was held by the Special Appeals Deputy in Charlotte, North Carolina on July 12, 1962 (R 3). Following such hearing in Charlotte, North Carolina, the Special Appeals Deputy rendered his decision and mailed such decision to these appellants, among others, on July 18, 1962 (R 4). Thereafter, on July 24, 1962, these appellants gave Notice of Appeal to the Full Commission (R 4, 65). Such hearing was heard before the Full Commission on August 10, 1962, and on that same date the Commission rendered its Decision No. 3301 in regard to this matter (R 6, 7, 48).

These appellants appealed the decision of the Employment Security Commission of North Carolina to the Superior Court (R 7, 65). Following such notice, a formal Statement of Grounds of Appeal to the Superior Court was filed with the Employment Security Commission on September 6, 1962 (R 7, 66).

The judgment of the Superior Court of Mecklenburg County reversed the decision of the Employment Security Commission, holding that the Commission was in error in finding and concluding that the claimants (including these appellants) were disqualified from receiving employment security benefits by reason of the provisions of North Carolina General Statute 96-14(4) *upon the facts and circumstances revealed by the evidence in the Record* (Emphasis Added), and that its decision was in error. The Superior Court further held that, upon the Record

which had been before the Commission, the provisions of North Carolina General Statute 96-14(4), as so applied under the facts and circumstances of this case established by the Record therein, constituted an unlawful discrimination against these claimants in violation of rights guaranteed to them by the Statutes and Constitution of the United States and by the Constitution of the State of North Carolina (R 88-89).

Upon their appeal to the Superior Court of Mecklenburg County, North Carolina, these appellants urged that the facts and circumstances of the Record and assignments of error made on appeal to the Superior Court, both in findings of fact and in Reasons and Conclusions of Law by the Employment Security Commission of North Carolina constituted denial of benefits to these appellants under the provisions of North Carolina General Statute 96-14(4) which amounted to an unlawful discrimination against these employees in violation of the rights guaranteed to them by the Federal Statutes and the Constitution of the United States of America and the Constitution of the State of North Carolina (R 78-79). With this contention of these appellants, the Superior Court agreed and reversed the Commission (R 89).

From the judgment of the Superior Court of Mecklenburg County, North Carolina, the Employment Security Commission gave Notice of Appeal to the Supreme Court of North Carolina (R 89).

The Supreme Court of North Carolina reversed the decision of the Superior Court of Mecklenburg County (R 97-105).

In its decision, the Supreme Court of North Carolina stated: "In their appeal to the Superior Court

from the Commission, the claimants, by exceptions challenged the sufficiency of the evidence to support the Commissions Findings of Fact. The trial court did not pass on these exceptions." (R 100). This misleading implication by the Supreme Court of North Carolina is negatived by the judgment of the Superior Court of Mecklenburg County, which based its decision *upon the facts and circumstances revealed by the evidence in the Record* (Emphasis Added) (R 88-89).

Apparently, the Supreme Court of North Carolina interpreted the law of that State prior to the attacked 1961 amendment, as having been designed to encourage work stoppages resulting from a labor dispute and the financing of such. The Court in its opinion said: "Employers in all probability did not contemplate their tax money would be used to encourage any work stoppage resulting from a labor dispute." (R 101).

The North Carolina Supreme Court even indicated that the law applicable in this situation prior to the 1961 amendment, which was in general accord and uniformity with the laws of all states, was generated toward permitting a depletion of the fund for purposes not in contemplation when the provision was originally made (R 102).

Insofar as the brief submitted by these appellants to the Supreme Court of North Carolina is concerned, the Court noted "The many cases cited by the Air Line Pilots Association are not in point" (R 104). The multitude of cases submitted to the Supreme Court of North Carolina and reviewed herein, *infra*, obviously had to review situations arising under Unemployment Security Acts which were similar to the

North Carolina Unemployment Security Act prior to 1961, since no Statute exists in the United States in any jurisdiction written in the discriminatory language of the present North Carolina General Statute 96-14(4) (R 104).

The decision of the North Carolina Supreme Court admitted that the disqualification of these claimants-appellants resulted from the labor dispute between the flight engineers and Eastern Air Lines (R 104).

Further, the Supreme Court of North Carolina asserted that only the highly sceptical would not be convinced that the North Carolina General Assembly acted within its constitutional powers in passing the 1961 amendment under attack on this appeal (R 105).

Nowhere in the Record containing the judgment of the Supreme Court of North Carolina is a declaration by that Court answering the contentions of these appellants and the judgment of the Superior Court of Mecklenburg County that North Carolina General Statute 96-14(4), as so applied under the facts and circumstances of this case established by the Record before the Superior Court, constituted an unlawful discrimination against the claimants-appellants in violation of rights guaranteed to them by the Statutes and Constitution of the United States and by the Constitution of the State of North Carolina.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The Supreme Court of North Carolina has ruled that the payment by the State of unemployment benefits under the State Employment Security Law may be denied and these claimants disqualified, even

though these claimants were unemployed through no fault of their own as a result of a labor dispute between their employer and a group of its employees occurring outside the State of North Carolina, and where these appellants did not participate in, did not help finance, did not stand to gain, and did not have any direct or indirect interest in such dispute.

I.

The United States Supreme Court decided *Sherbert vs. Verner, supra*, under the First and Fourteenth Amendments' guarantee of the free exercise of religion, but the Court was aware that the appellant in that case had contended that the denial of benefits also deprived her of the equal protection of the laws in violation of the Fourteenth Amendment. *Sherbert vs. Verner, supra*, p. 1797.

As construed and applied by the Court below, the State disqualification statute, promulgated by amendment of said General Statute by the 1961 General Assembly of the State of North Carolina, constituted an abridgment of the privileges of the appellants herein, citizens of the United States of America, and said General Statute of the State of North Carolina deprived these appellants of property without due process of law and denied to these appellants the equal protection of the laws, as guaranteed to them by Amendment XIV of the Constitution of the United States.

It has frequently been stated that "the equal protection of the laws is a pledge of the protection of equal laws." *Perley vs. North Carolina*, 249 U.S. 510, 63 L.Ed. 735, 39 S. Ct. 357. The guaranty of the equal protection of the laws means that no person or class

of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances. *Kentucky Finance Corporation vs. Paramount Auto Exchange Corporation*, 262 U.S. 544, 67 L.Ed. 1112, 43 S. Ct. 636. Equal protection of the laws is something more than an abstract right, and is a command which the state must respect, the benefits of which every person may demand. *Hill vs. Texas*, 316 U.S. 400, 86 L.Ed. 1559, 62 S. Ct. 1159. The guiding principle most often stated by the courts is that this constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. *Hartford Steam Boiler Inspection and Insurance Company vs. Harrison*, 301 U.S. 459, 81 L.Ed. 1223, 57 S. Ct. 838. Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right is just as clearly a denial of the equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted to be worked against, a larger class. *Truax vs. Corrigan*, 257 U.S. 312, 66 L.Ed. 254, 42 S. Ct. 124.

Equal protection in its guaranty of like treatment to all similarly situated permits classification only which is reasonable and not arbitrary and which is based upon substantial differences having a reasonable relation to the objects of persons dealt with and to the public purpose sought to be achieved by the legislation involved. *Sage Stores Company vs. Kansas*, 323 U.S. 32, 89 L.Ed. 25, 65 S. Ct. 9.

The precept most often employed states that a classification to be valid must always rest on a dif-

ference which bears a fair, substantial, natural, reasonable, and just relation to the object, act, or persons in respect to which it is proposed. *Carmichael vs. Southern Coal and Coke Company*, 301 U.S. 495, 81 L.Ed. 1245, 57 S. Ct. 868.

Discrimination in awarding of unemployment compensation benefits in North Carolina is manifest in the Record where it appears that the Commission's sole line of delineation was determined by whom the claimant was employed (R 11). Various individuals in the State of North Carolina who were idled by the same labor dispute that idled these claimants, such as the employees of the restaurant at the Charlotte, North Carolina, airport, were paid benefits, predicated solely upon the fact that the restaurant employees, although unemployed by the same labor dispute, were not employees of these claimants' employer (R 11).

The unemployment compensation statutes are designed to provide a reasonable and effective means for the promotion of social and economic security (*California Compensation Ins. Company vs. Industrial Acc. Commission*, 276 P. (2d) 148, 128 C.A. (2d) 797 and are further designed to provide relief or protection to employees against the hardships caused by involuntary unemployment. *De Raef Corporation vs. U. S.*, 70 F. Supp. 264.

Equal protection under the Employment Security and Unemployment Compensation Laws of the State of North Carolina has been denied these appellants without any reasonable distinction, in that benefits were awarded to citizens of this State who were unemployed by reason of the same labor dispute which resulted in the disqualification of these appellants.

The Fourteenth Amendment and laws adopted under its authority embody a general policy that all persons lawfully in the United States shall abide in any state on an equality of legal privileges with all citizens under the nondiscriminatory laws. *Torao Takahashi vs. Fish and Game Commission*, 68 S.Ct. 1138, 334 U.S. 410, 92 L.Ed. 1478. A state cannot, by judicial decision or otherwise, remove any of its activities from inhibitions of the Fourteenth Amendment. *City of St. Petersburg vs. Alsup*, 238 F. (2d) 830, Cert. Den. 353 U.S. 922, 77 S.Ct. 680, 1 L.Ed. (2d) 719.

If an individual is denied a facility or convenience or right which under substantially the same circumstances is furnished to others, he may properly complain that his constitutional right to equal protection of laws has been invaded. *Beal vs. Holcombe*, 193 F. (2d) 384, Cert. Den. 347 U.S. 974, 98 L.Ed. 1114, 74 S.Ct. 783. Equal protection of the laws is not achieved through the indiscriminate imposition of inequalities. *Goesaert vs. Cleary*, 335 U.S. 464, 93 L.Ed. 163, 69 S.Ct. 198.

The Legislature is free to make classifications in the application of a Statute only if such classifications are relevant to the legislative purpose sought to be accomplished. The ultimate test of validity is whether the differences between the classes are pertinent to the subject with respect to which the classification is made. No difference appears in the Record to justify discrimination in favor of certain employees in North Carolina in awarding them benefits and in denying these appellants, when both classes of employees were unemployed due to a labor dispute through no fault of their own. A law non-discriminatory on its face may

be grossly discriminatory in its operation. *Griffin vs. People of State of Ill.*, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585.

II.

The disqualifying provisions of North Carolina General Statute 96-14(4) constituted an unnecessary interference with the rights of the citizens of the State of North Carolina, in particular these appellants, and amounted to an usurpation of the police power of the State of North Carolina, in that the said Statute was more extensive and discriminatory than was required for the protection of the public health, safety, morals and general welfare.

States have the power to legislate against what are found to be injurious practices in their internal commercial and business affairs so long as their laws do not run afoul of some specific Federal constitutional prohibition. *Lincoln Federal Labor Union No. 19129, A.F. of L. vs. Northwestern Iron and Metal Company*, 335 U.S. 525, 93 L.Ed. 212, 69 S.Ct. 251; *American Federation of Labor, Arizona State Federation of Labor vs. American Sash and Door*, 335 U.S. 538, 93 L.Ed. 222, 69 S.Ct. 260.

Legislative control must cease when it passes from matters touching public welfare into matters historically mercantile and not rationally related to the public good, and, even where public welfare is involved, the effect of the statute must bear a reasonable relation to the purpose to be accomplished and must not discriminate between two similarly circumstanced groups, regulating one but exempting the other. To justify a state in imposing its authority in behalf of the public, it must appear that the interest of the

public generally, as distinguished from those of a particular class, require such interference and that means used are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. *Lee Optical of Oklahoma vs. Williamson,* 120 F. Supp. 128, Affirmed in part and Reversed in part 348 U.S. 483, 99 L.Ed. 563, 75 S.Ct. 461. A paramount duty of the state is to exercise its police powers to minimize those things calculated to undermine the morals of its citizens. *Werner vs. City of Knoxville,* 161 F. Supp. 9.

These appellants further contend, and did so below, that North Carolina General Statute 96-14(4), as amended, is unconstitutional and void as being against public policy and the spirit of the North Carolina Employment Security Law. The claimants concede that the Employment Security Law of North Carolina was promulgated as a supposed measure of public policy by the General Assembly and as a constitutional exercise of the police power in general, but these appellants do not yield to such an interpretation of the 1961 Amendment before this Court.

The police power of the State is as extensive as may be required for the protection of the public health, safety, morals, and general welfare. *Taylor vs. Racing Asso.*, 241 N.C. 80, 84 S.E. (2d) 390. But, the enactment of the Statute under question before this Court demonstrates no theories which would suggest that the protection of the public health, safety, morals and general welfare guided the General Assembly in passing this law. On the contrary, the very things sought to be protected in the inherent exercise of the police power have been critically denied to citizens of North

Carolina by the enactment of this law. And, for a period of several weeks, circumstances among a great portion of the Eastern Air Lines employees in North Carolina, was such that their state of general welfare was tremendously demoralized and their legal protection was greatly diminished.

But, with no semblance or rational reason, or proper purpose, the General Assembly of North Carolina exercised its discretion to such an arbitrary extent that it amounted to an undeniable and unnecessary interference with the rights of these claimants, as evidenced by the fact that these claimants would have drawn unemployment benefits, as they are informed and believe, in every other state of the Union.

The police power is subordinate to the constitutional guarantee of equality of privilege and of burden, and any attempted exercise thereof which results in the denial of equal protection or application of the law is invalid. *State vs. Scoggin*, 236 N.C. 1, 72 S.E. (2d) 97.

Further, the police power is in derogation of personal liberty, and extends only to measures enacted for the good of the citizens as a whole and which have a rational, real, or substantial relation to the public health, morals, order, safety, or the general welfare. *Roller vs. Allen*, 245 N.C. 516, 96 S.E. (2d) 851. Statutes enacted in the exercise of the police power should be strictly construed so as to result in the least interference with personal liberty. *State vs. Mitchell*, 217 N.C. 244, 7 S.E. (2d) 567.

In determining whether a statute enacted in the exercise of the State police power is unreasonable, arbitrary or capricious or lacking in real and substan-

tial relationship to the objective sought to be accomplished, it is proper to consider the historical development of the problem and prevailing public opinion in regard to the evils sought to be suppressed. *State vs. Whitaker*, 228 N.C. 352, 45 S.E. (2d) 860. These claimants' contention that G. S. 96-14(4) is unreasonable, arbitrary and capricious, was borne out by the fact that the Amendment suggested no objective which it seeks to accomplish. The natural purposes of the Unemployment Compensation Laws are to prevent unfortunate and cruel suffering by individuals who cannot help themselves and have no control over the predicament in which circumstances have placed them. Therefore, it is contended the Unemployment Compensation Laws and any Amendments thereto should seek to enhance the normal objective of ANY employment Security Law. Rather than buttress this legitimate objective, the 1961 General Assembly has accomplished an objective diametrically opposed to the declared public policies of the State. There has been no development in the administration of our Unemployment Compensation Laws of which these claimants are aware which establishes any sort of concrete problem that this Amended Statute could possibly overcome. Payment of unemployment compensation benefits is designed to suppress the evil of enforced unemployment. These claimants were victims of enforced unemployment but, nevertheless, the 1961 General Assembly, rather than seeking to extend coverage to those lawfully entitled thereto, compounded and perpetrated the evil by its enactment of this law.

For the declaration of the public policy of the State of North Carolina in unemployment compensation

matters, see North Carolina General Statute 96-2, where the following appears: "The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

Relief statutes are to be construed liberally. *Ray vs. Social Security Board*, 73 F. Supp. 58. A state statute intended to place the state in a position to take advantage of the benefits tendered under the Federal Social Security Act should be construed in relation to the purposes and objectives of that act. *Multnomah County vs. Luihn*, 178 P. (2d) 159, 180 Ore. 528.

It has generally been heid that the broad social purposes of the Social Security Act and its related taxing provisions, formerly incorporated therein but now separately enacted as the Federal Insurance Contributions Act, 26 U.S.C.A. Sec. 1400, *et seq*, and the Federal Unemployment Tax Act, 26 U.S.C.A. Sec. 1600, *et seq*, require it to be construed so as to include as many persons as possible, and that all doubt in construing the act and its related taxing provisions should favor coverage rather than exemption. *General Wayne Inn vs. Rothensies*, 47 F. Supp. 391; *Ewing vs. McLean*, 189 F. (2d) 887. With respect to coverage, the sweep of the Social Security Act on a national scale is not to be interrupted by the variations and idiosyncrasies in local law. *O'leary vs. Social Security Board*, 153 F. (2d) 704.

III.

The enactment of North Carolina General Statute 96-14(4), as amended by the 1961 North Carolina General Assembly, resulted in a disharmony to the declared uniform objectives sought by the Congress through its enactment of the Federal Social Security Act. It is respectfully submitted that the Congress, by its enactment of the Federal Social Security Act, intended for unemployment compensation insurance to be paid by the states on a uniform national basis and without discrimination by any one of the several states, which would deny to certain citizens of that state rights enjoyed under the Federal Social Security Act by citizens of other states.

In view of the dual nature of the Federal and State laws, it is a fair presumption, in the absence of evidence to the contrary, that the purpose of Congress was to have the State laws as closely coterminous as possible with the Federal law, and the State laws should be so construed. *Buckstaff Bathhouse Company vs. McKinley*, 308 U.S. 358, 84 L.Ed. 322, 60 S.Ct. 279.

It is generally held that while the terms of the Federal Social Security Act and judicial and administrative rulings thereunder are not conclusive in contruing state social security or unemployment compensation acts, they are nevertheless entitled to be given great weight. *Northwestern Mutual Life Insurance Company vs. Tone*, 4 A. (2d) 640, 125 Conn. 183.

State unemployment insurance and compensation statutes are designed to work closely with comparable Federal legislation. *Pioneer Potato Company vs. Di-*

vision of Employment Security, Department of Labor and Industry, 111 A. (2d) 888, 17 N.J. 543. They are a part of a national plan to promote the social welfare (*California Employment Commission vs. Kovacevich*, 165 P. (2d) 917, 27 Cal. (2d) 546, by alleviating the principal causes of insecurity in the economic life of the country. *Rivard vs. Bijou Furniture Company*, 21 A. (2d) 563, 67 R.I. 251. The Federal and State enactments represent a cooperative legislative effort by the state and national governments to carry out a common public purpose. *In Re Blackwood*, 147 F. Supp. 93, Affd. 242 F. (2d) 201, Cert. Den. 78 S.Ct. 86, 355 U.S. 857, 2 L.Ed. (2d) 64. Neither government could fully achieve this purpose without the other's cooperation. *Carmichael vs. Southern Coal and Coke Company, supra.*

Thus, the Federal act forms the background of practically all the state statutes on the subject of unemployment compensation. *A. K. Meyer and Company vs. Unemployment Compensation Commission*, 152 S.W. (2d) 184, 348 Mo. 147. The Federal act was enacted to reimburse the Federal treasury for unemployment relief expenditures which were primarily the burden of the states and to encourage the states to assume their proper burden with reference to the problem of unemployment. *Charles C. Steward Machine Company vs. Davis*, 89 F. (2d) 207, Affd. 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 1279. This encouragement to the states was designed to induce them to enact unemployment compensation statutes. *Standard Dredging Corp. vs. Murphy*, 63 S.Ct. 1067, 319 U.S. 306, 87 L.Ed. 1416. The state statutes were enacted in order to permit the states to take advantage

of the benefits provided by the Federal act. *Carmichael vs. Southern Coal and Coke Company, supra.*

No other state in the Union disqualifies workers under a labor dispute disqualification provision similar to that enacted by North Carolina in 1961.

In analyzing the laws of other jurisdictions, which were submitted to the Courts below, attention must be focused necessarily on the law which existed in North Carolina pertaining to disqualification for benefits prior to the challenged 1961 Amendment. G. S. 96-14(4), prior to July 1, 1961, contained what is familiarly known throughout the United States, insofar as disqualification provisions within the Employment Security Laws are concerned, as the "Escape Clause." The "Escape Clause" uniformly provides the following:

> (a) He (Claimant) is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
>
> (b) He (the claimant) does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the stoppage . . ."

Notwithstanding the fact that North Carolina has seen fit to delete the "Escape Clause" which formerly appeared in our Employment Security Act, 41 of our sister states have elected to retain this provision within the disqualification portion of their laws dealing with exclusion from benefits due to a labor dispute or

stoppage of work. The "Escape Clause," as indicated above, appears verbatim or practically verbatim with the above wording, in the labor dispute disqualification provisions of the Employment Security Laws of the following States:

1. ALASKA, Ch. 5, 1st Extraordinary Session Laws of Alaska, 1955, S. 741(i), as amended, which also requires that the disqualification result from a labor dispute at the immediate factory, etc.

2. ARIZONA, Ch. 4, Employment Security, Arizona R.S., S. 23-777.

3. ARKANSAS, Sec. 1, Act 395, Ark. Acts of 1955, Sec. 8, Ark. Stats., 1947, Sec. 81-1105(f) as amended by Act 97 of 1959, approved Feb. 24, 1959.

4. COLORADO, Ch. 82, Colo. R.S., 1953, S. 82-4-11, as amended.

5. CONNECTICUT, S. 31-236, Sub-division 3, G. S. of Conn. Rev. of 1958, which, incidentally, restricts disqualification as a result of a labor dispute to a labor dispute in Conn. only and does not extend outside of the State of Conn., embracing the world at large as does the language of the North Carolina Statute.

6. FLORIDA, S. 443.06(4) (b), as amended.

7. GEORGIA, S. 54-610(d) (1) (2) Code of Ga.

8. HAWAII, S. 93-29(d) (1) (2), Ch. 93, Vol. I. R. L. of Hawaii, 1955 ('61 Supp.)

9. IDAHO, 72-1366(j) (1) (2).

10. ILLINOIS, S. 604, Unemployment Security Act, Ill.

11. INDIANA, S. 16, Ch. 177, Acts 1953 (March 13, 1953 approved date). This Statute also provides that if a claimant stops working at the direction of his employer, he is not disqualified from unemployment compensation benefits.

12. IOWA, S. 96-5(4) Code of Iowa 1962.

13. KANSAS, S. 44-706(d) 1961 Supp. to G. S. of Kan. 1949 (same being Ch. 245 of Laws of Kan. 1961).

14. LOUISIANA, S. 1601(4), Title 23, La. R. S., 1950.

15. MAINE, S. 15, IV. Ch. 29, R. S. of Me., 1954, as amended.

16. MARYLAND, S. 6(e) (1) (2) Art. 95A, Anno. Code of Md. (1957 Ed. & Supplements thereto).

17. MASSACHUSETTS, S. 25(b) Ch. 151A, Gen. Laws of Commonwealth of Mass. 1921, as appearing in Tercentenary Edition thereof and as amended.

18. MICHIGAN, S. 29, Art. No. 1 of the Public Acts of the Extra Session of 1936, as last amended by Act No. 281 of the Public Acts of 1955.

19. MISSISSIPPI, 7379, Miss. Code, Sec. 5(e) (1) (2) (3).

20. MISSOURI, Ch. 288.040(4) (1) (2), R.S. of Mo. 1959.

21. MONTANA, S. 87-106(d), Rev. Code of Mt., 1947, as amended.

22. NEBRASKA, S. 46-628 (d), R. S. of Neb., 1943(1) (6) (Amended Supp).

23. NEVADA, S.612.395(1) (2) Nev. R. S., 1957, as amended.

24. NEW HAMPSHIRE, S. 282(i) (4) (f) New Hampshire, R. S. Anno.

25. NEW JERSEY, Title 43, Ch. 21, S. 5(d), R. S. of N. J.

26. NEW MEXICO, S. 59-9-5-(d), N. M. S. Anno. 1953 Compilation.

27. NORTH DAKOTA, Ch. 52-06-02(4), 1960 Century Code of St. of N. D.

28. OKLAHOMA, S. 215(d), Title 40, Okla. Stats. 1961.

29. OREGON, S. 657.200(1) (2) (3) Oregon R. S.

30. PENNSYLVANIA, Act No. 530 (May 23, 1949), S. 402(d), p. 21-22.

31. RHODE ISLAND, S. 28-44-16, G. L. of R. I., 1956. In Rhode Island a Claimant receives unemployment benefits after a duration of six weeks, even though the labor dispute may have occurred in his own establishment. But, notwithstanding that, the suspension from benefits for a period of six weeks does not apply if the claimant was not a member of the group responsible for the stoppage of work.

32. SOUTH CAROLINA, S. 68-114(d), which requires that the unemployment be DIRECTLY due to a labor dispute in active progress at the establishment where employed.

33. SOUTH DAKOTA, S. 17-0830(4) Code of S. D.

34. TENNESSEE, S. 50-1324(D) Tenn. Code Anno.

35. TEXAS, S. 5221 b-3(d), Vernon's Civil Stats. of St. of Tex., Anno.

36. UTAH, Title 35, Ch. 4(d), Laws of Utah 1953, allowing disqualification from benefits only where the strike involved claimants of the same grade, class, or group of workers at the factory where the claimants were last employed.

37. VIRGINIA, S. 60-47(d), Code of Commonwealth of Va.

38. WASHINGTON, S. 50.20.090, Rev. Code of Wash., as amended.

39. WEST VIRGINIA, S. 2366(78) (4), Ch. 21-A, Michies' W. Va. Code of 1961.

40. WYOMING, S. 27-26 B, Wyo. Stats. 1957.

41. VERMONT, Title 21, S. 1344(5), Vermont Stats. Anno.

Particular emphasis, it is felt, should be devoted to the statutes of the States of Texas and Virginia. Those two states have amended their labor disqualification provisions so that it is almost verbatim with G. S. 96-14(4), AS AMENDED by the 1961 North Carolina General Assembly. However, notwithstanding that the States of Texas and Virginia have enlarged this disqualification provision to cover the broad territory covered by North Carolina statutes, these two states still provide the "Escape Clause" to protect the "innocent bystanders," who have not participated in the

labor dispute in question; who have not financed the labor dispute in question; who have not been directly interested in the labor dispute in question; who do not belong to a grade or class of workers who have participated in or financed or become directly interested in the labor dispute in question and who are unemployed due to no fault of their own.

Thus, at this point of analyzing the laws of our sister states, it is apparent that North Carolina's position is already in opposition to the position taken by 41 other states, including specifically the States of Texas and Virginia which have enacted far-reaching amendments in the language of G. S. 96-14(4), but which still all contain the "Escape Clause" to protect those outside of the labor dispute who have no control over the inevitable consequences which flow so broadly from any labor dispute. The State of Alabama requires that the unemployment of a claimant be DIRECTLY due to a labor dispute still in active progress in the establishment in which the claimant was last employed. Title 26, Code of Ala., 1940, Sec. 214, Para. A.

California requires that the unemployment be due to a labor dispute in ACTIVE progress in the establishment in which the claimant was employed. S. 1262 Unemployment Insurance Code, St. of Calif. as amended by 1953 Legis., Sep. 9, 1953.

In Delaware, the labor dispute must be at THE factory, establishment, etc., at which the claimant was employed. Title 19, S. 3315(4), Delaware Code.

Kentucky also requires that the dispute be in ACTIVE progress in the establishment where the claimant was employed. S. 341.360 Ky. R. S., 1960 Ed.

Minnesota requires that the labor dispute or strike be in progress at THE establishment at which the claimant was last employed. S. 268.09(1) (6) Minn. G. S. Laws.

The State of New York, aware of the economical consequences of unemployment, even though such unemployment may be due to a labor dispute or work stoppage, does not disqualify claimants altogether, but restricts the duration of the disqualification to a period of seven weeks suspension if the unemployment is due to an industrial controversy IN THE ESTABLISHMENT AT WHICH THE CLAIMANT WAS EMPLOYED. S. 592 of Labor Law, as contained in and as last amended by Ch. 387 of the Laws of 1958.

In Ohio, if a claimant is laid off because of a labor dispute for an indefinite period of time, there is no disqualification if the unemployment did not result from a labor dispute at his premises or factory or establishment. S. 4141.29(d) (1) (a).

Wisconsin also requires that the strike or labor dispute be in active progress in the establishment in which the claimant was employed. S. 108.04(10), Wis. Stats. of 1959.

It, therefore, stands beyond reasonable question that North Carolina's enactment of G. S. 96-14(4) has placed it apart from its 49 sister states and that this has been done by the General Assembly through its passage of a bill admittedly submitted to it by the Employment Security Commission of North Carolina. The legislative history of the Employment Security Laws in North Carolina and the legislative history of this particular amendment demonstrate no grave crises which would have necessitated such drastic and

harsh action on the part of the General Assembly or on the part of the Employment Security Commission. The enactment of G. S. 96-14(4) was accomplished in a purported exercise of the police power, but the exercise of the police power will not be upheld where it does not tend to preserve the public health, safety, morals, or welfare of the people of the State. PALMER v. SMITH, 229 N.C. 612, 51 S.E. (2d) 8.

It is submitted that the enactment of G. S. 96-14(4) in no way shows any substantial relationship to any effort to preserve the public health, safety, morals and welfare of the citizens of this State, particularly the employees of Eastern Air Lines who were unemployed through no fault of their own and became victims of enforced hunger, deprivation, intolerable burdens, financial embarrassment and devastating hardships.

To examine the position taken by North Carolina's sister state, Kentucky, in this very dispute, attention is invited to the unreported order of the Kentucky Employment Insurance Commission in the case entitled: "In the Matter of the Claims for Benefits by Teddie Little (SS No. 406 12 4756, A. D. No. 62-2152) and One Hundred and Four other similarly situated employees of Eastern Air Lines, Inc. (App., pp. 48a-57a).

CONCLUSION

Hundreds of innocent victims of enforced unemployment in the State of North Carolina have been deprived of unemployment compensation benefits because of the prevailing disqualification statute in North Carolina, although these appellants were unemployed due to no fault of their own and due to a labor

dispute outside the state of North Carolina in which they had no interest whatsoever. All other states embraced by the Eastern Air Lines system paid the employees of that company unemployment compensation benefits during the duration of the work stoppage because of the principles urged herein by these appellants. Either North Carolina's position is correct and that of the overwhelming majority of her sister states is incorrect, or these appellants have been denied the equal protection of the laws contemplated by the Congress, the Constitution and the Federal Social Security Act.

It is submitted that authoritative determination of the questions presented on this appeal is imperative for the proper and equitable administration of the Unemployment Compensation Laws in each state of the Union. In view of the fact that every state has a labor dispute disqualification provision in its Employment Security Laws, it is submitted further that the issues raised by this appeal affect every state, employer and employee in the United States.

Respectfully,
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